



**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

**TE/GE: EO Examinations**

**1100 Commerce Street, MC 4920 DAL**

**Dallas, TX 75242**

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

**September 16, 2016**

**Number: 201652028**  
**Release Date: 12/23/2016**

**Taxpayer Identification Number:**

**Person to Contact:**

**Identification Number:**

**UIL: 501.19-00**

**Contact Telephone Number:**

**CERTIFIED MAIL**

**Dear :**

This is a final adverse determination regarding your exempt status under section 501(c)(19) of the Internal Revenue Code (the Code). Our favorable determination to you effective June 1, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

As a result of our examination for the tax years ended December 31, 20XX and December 31, 20XX, it was determined that your organization failed to meet the membership requirements set forth in Regs. 1.501(c)(19)-1(b). Therefore, you do not qualify for continued exemption under IRC 501(c)(19).

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for tax years ended December 31, 20XX and December 31, 20X and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

United States Tax Court  
400 Second Street, NW  
Washington, D.C. 20217

United States Court of Federal Claims  
717 Madison Place, NW  
Washington, D.C. 20005

United States District Court for the District of Columbia  
333 Constitution Avenue, NW  
Washington, D.C. 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [taxpayeradvocate.irs.gov](http://taxpayeradvocate.irs.gov) or call 1-877-777-4778.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Margaret Von Lienen  
Director, EO Examinations

Enclosure:  
Publication 892



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities  
Exempt Organizations Examinations  
1100 Commerce Street MS 4900 DAL  
Dallas, TX 75242-1100

Date:  
April 6, 2016  
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:  
Telephone:  
Fax:  
Manager's Name/ID Number:

Manager's Contact Number:

Response due date:

**Certified Mail – Return Receipt Requested**

Dear :

**Why you are receiving this letter**

We propose to revoke your status as an organization described in section 501(c)(19) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

**What you need to do if you agree**

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(19).

**If we don't hear from you**

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

**Effect of revocation status**

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

**What you need to do if you disagree with the proposed revocation**

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter.

The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service  
Office of the Taxpayer Advocate

**For additional information**

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Paul A. Marmolejo  
Director, EO Examinations

Enclosures:  
Report of Examination  
Form 6018  
Publication 892  
Publication 3498

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended  20XX12, 20XX12, & 20XX12	

### **Issues**

Does the \_\_\_\_\_ (the organization) qualify for exemption under section 501(c)(19) of the Internal Revenue Code (the Code or IRC)?

Should the organization's tax exempt status under section 501(c)(19) of the Code be revoked?

### **Facts**

According to their Articles of Incorporation, the organization was incorporated on June 1, 20XX, with the stated exempt purpose to operate the \_\_\_\_\_ and related lawful activities.

The organization has not filed Form 1024 in order to receive a Determination Letter. Prior to making contact with the organization, the examining agent attempted to secure the administrative record from Exempt Organization Determinations. The examining agent was informed that no record exists. However, internal IRS records indicate that the organization is exempt under section 501(c)(19). On their Form 990 for the tax years ended December 31, 20XX, 20XX, and 20XX, the organization filed as an organization described in section 501(c)(19).

The organization's activities include the operation a social club for the enjoyment and pleasure of their members and guests. The social club operated by the organization has a bar, kitchen, and dining room. They also have small games of chance. The members of the organization have to pay for all drinks, food, and small games that are enjoyed by their guests.

The organization makes several donations to local charities each year and provides funds to local schools for scholarships.

The organization does not participate in any political or legislative activities or expenditures.

The organization does not own any real estate or buildings. They rent the building that contains the social club facilities from \_\_\_\_\_. They are not allowed to rent the facility to any outside entities. They do not have a catering license.

The organization's membership classes are regular members, who are members of the \_\_\_\_\_, and social members. Both membership classes enjoy equal rights to the use of the club. However, only regular members have a vote and can hold office. According to their membership records, for the year ended December 31, 20XX, there were a total of X,XXX members. There were XXX regular members (including XX life members) and X,XXX social members.

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## Law

### **SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.**

**501(a) EXEMPTION FROM TAXATION.** —An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

**501(c)(19)** A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization —

**501(c)(19)(A)** organized in the United States or any of its possessions,

**501(c)(19)(B)** at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and

**501(c)(19)(C)** no part of the net earnings of which inures to the benefit of any private shareholder or individual.

### **SEC. 7428. DECLARATORY JUDGMENTS RELATING TO STATUS AND CLASSIFICATION OF ORGANIZATIONS UNDER SECTION 501(c)(3) , ETC.**

**7428(a) CREATION OF REMEDY.** —In a case of actual controversy involving —

**7428(a)(1)** a determination by the Secretary —

**7428(a)(1)(E)** with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c) (other than paragraph (3)) or 501(d) and exempt from tax under section 501(a), or

**7428(a)(2)** a failure by the Secretary to make a determination with respect to an issue referred to in paragraph (1),

upon the filing of an appropriate pleading, the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification or with respect to

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such initial classification or continuing classification. Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification.

**7428(b) LIMITATIONS. —**

**7428(b)(1) PETITIONER. —**A pleading may be filed under this section only by the organization the qualification or classification of which is at issue.

**7428(b)(2) EXHAUSTION OF ADMINISTRATIVE REMEDIES. —**A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service. An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

**7428(b)(3) TIME FOR BRINGING ACTION. —**If the Secretary sends by certified or registered mail notice of his determination with respect to an issue referred to in subsection (a)(1) to the organization referred to in paragraph (1), no proceeding may be initiated under this section by such organization unless the pleading is filed before the 91st day after the date of such mailing.

**7428(d) SUBPOENA POWER FOR DISTRICT COURT FOR DISTRICT OF COLUMBIA. —**In any action brought under this section in the district court of the United States for the District of Columbia, a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States.

**Taxpayer's Position**

The organization has verbally agreed to the revocation of their exempt status under section 501(c)(19) of the Code.

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### **Government's Analysis & Position**

To be exempt under section 501(c)(19) the organization must meet the membership requirements found in Treas.Reg.1.501(c)(19)-1(b), and the organizational requirements and operational requirements set forth in Treas. Reg. 1.501(c)(19)-1(c). Failure of any of these requirements precludes exemption under section 501(c)(19).

The first test is the membership test found in Treas.Reg.1.501(c)(19)-1(b). Those requirements are:

At least 75% of the members must be present or former members of the United States armed forces.

At least 97.5% of the members must be:

1. present or former members of the U.S. Armed Forces,
2. cadets who are students in a college or university ROTC program or at an Armed Services Academy, or
3. spouses, widows or widowers, ancestors, or lineal descendants of such persons.

When applying the 75% test requirement:

No more than 25% of the total membership may be non-veterans.

Of the 25%, at least 90% of the members must be widows or widowers, spouses, parents, children, or grandchildren of veterans or cadets.

After the membership test is passed, in order to meet the organizational and operation requirements, the activities of the organization must meet one or more of the eight requirements set forth in Treas. Reg. 1.501(c)(19)-1(c):

1. Promote the social welfare of the community as defined in Treas. Reg. 1.501(c)(4)-1(a)(2),
2. Assist disabled and needy war veterans and members of the United States Armed Forces and their dependents, and the widows and orphans of deceased veterans. For example, providing color guard services for a veteran's funeral,



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3. Provide entertainment, care, and assistance to hospitalized veterans or members of the Armed Forces of the United States,
4. Carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces and to comfort their survivors,
5. Conduct programs for religious, charitable, scientific, literary, or educational purposes,
6. Sponsor or participate in activities of a patriotic nature,
7. Provide insurance benefits for its members or dependents of its members or both, or
8. Provide social and recreational activities for its members.

Finally, no part of the earnings of the organization can inure to the benefit of private shareholders or individuals.

The analysis must begin with the membership test.

There are X,XXX members of the organization. Of this amount, XXX are regular members which include dues paying members and life members. These members are members of \_\_\_\_\_ and are veterans who served during a time of conflict ( \_\_\_\_\_ ). So XX% of the total members are veterans that served during \_\_\_\_\_. The remaining X,XXX members are social members and make up XX% of the total membership in the organization. To be fair, some of these social members did serve in the military during peace time. However, their number would not lead to a different result.

It is the Government's position that the \_\_\_\_\_ does not qualify for exemption under section 501(c)(19) of the Internal Revenue Code because they fail the membership test under Treas.Reg.1.501(c)(19)-1(b).

It is the Government's position that the \_\_\_\_\_ tax exempt status under section 501(c)(19) of the Internal Revenue Code should be revoked effective January 1, 20XX.

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### Conclusions

It is the Government's position that the \_\_\_\_\_ does not qualify for exemption under section 501(c)(19) of the Internal Revenue Code because they fail the membership test under Treas.Reg.1.501(c)(19)-1(b).

It is the Government's position that the \_\_\_\_\_ tax exempt status under section 501(c)(19) of the Internal Revenue Code should be revoked effective January 1, 20XX.

The estimated tax due for the year ended December 31, 20XX, is calculated as follows:

Total revenues net of direct expenses as reported on Form 990	\$XXX,XXX
Total functional expenses as reported on Form 990	<u>\$XXX,XXX</u>
Net income	\$X,XXX
Tax rate per section 11 of the Internal Revenue Code	<u>XX%</u>
Estimated income tax due	\$XXX

The estimated tax due for the year ended December 31, 20XX, is calculated as follows:

Total revenues net of direct expenses as reported on Form 990	\$XXX,XXX
Total functional expenses as reported on Form 990	<u>\$XXX,XXX</u>
Net income	(\$XX,XXX)
Tax rate per section 11 of the Internal Revenue Code	<u>XX%</u>
Estimated income tax due	\$X

The estimated tax due for the year ended December 31, 20XX, could not be determined because the Form 990 has not been filed.

If you agree to the findings of this report, please sign the enclosed Form 6018. We request that you prepare and submit Forms 1120 for the tax years ended December 31, 20XX, 20XX, and 20XX. Checks for the tax due should be made payable to the United States Treasury. These forms and any payment should be sent to the examining agent within 30 days from the date of this letter to insure proper processing.

This case is subject to Mandatory Review. After Mandatory Review approves, they will issue the final letter revoking your tax exempt status under section 501(c)(19) of the Internal Revenue Code.

If you do not agree, please follow the instructions in Letter 3618, Publication 892, and Publication 3498.

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If we do not hear from you within 30 days from the date of this letter, we will issue a final revocation letter.

Separate reports will be issued for the employment tax and backup withholding issues.